

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CLARENCE HUGH ETHRIDGE, Individually §
And as Personal Representative of the Estate of § CAUSE NO. _____
OUIDA LUCILLE ETHRIDGE, Deceased; §
DONNA WRIGHT and §
DEBRA K. SCHULTZ §
§
vs. § JURY DEMANDED
§
INVACARE CORPORATION and §
AMERICAN BANTEX CORPORATION §

INDEX OF DOCUMENTS BEING FILED

Pursuant to Local Rule 81, Defendant Invacare Corporation ("Invacare") files the following index concurrently with their Notice of Removal of Cause No. 11-CV-1364 filed in the District Court of Galveston County, Texas, 212th Judicial District:

Exhibit A- Affidavit by Gretchen Schuler;

Exhibit B- Plaintiff's Original Petition with Discovery; and

Exhibit C- List of parties, counsel of record, and status of removed case.

Respectfully submitted,

LORANCE & THOMPSON, P.C.

"/s/ Robert G. Smith, Jr."

Robert G. Smith, Jr.

SBN: 00794661

FBN: 19976

rgs@lorancethompson.com

Katie Sunstrom

SBN: 24037538

FBN: 34370

ks@lorancethompson.com

2900 North Loop West, Ste. 500

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Telephone: 713/868-5560

Facsimile: 713/864-4671

**ATTORNEYS FOR DEFENDANT,
INVACARE CORPORATION**

CERTIFICATE OF SERVICE

I certify that on the 23rd day of September, 2011, a true and correct copy of the foregoing document was furnished to the following parties pursuant to Federal Rules of Civil Procedure:

Marian S. Rosen
SBN: 17263000
Angela Spears
SBN: 00792866
Marian S. Rosen & Associates
5065 Westheimer, Suite 840
Houston, Texas 77056
713.222.6464
713.227.4703 (fax)

ATTORNEYS FOR PLAINTIFFS

Paul Lin
Registered Agent
American Bantex Corporation
1815 Rollins Road
Burlingame, California 94010.

"/s/ Robert G. Smith, Jr."
Robert G. Smith, Jr.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CLARENCE HUGH ETHRIDGE, Individually §
And as Personal Representative of the Estate of §
OUIDA LUCILLE ETHRIDGE, Deceased; §
DONNA WRIGHT and §
DEBRA K. SCHULTZ §

vs. §

INVACARE CORPORATION and §
AMERICAN BANTEX CORPORATION §

CAUSE NO. _____

JURY DEMANDED

AFFIDAVIT

STATE OF OHIO)
)
COUNTY OF Lorain)

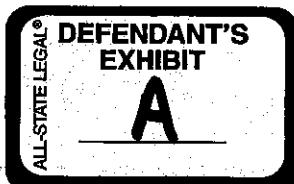
BEFORE ME, the undersigned authority, personally appeared Gretchen Schuler, who, being by me duly sworn, deposed as follows:

"My name is Gretchen Schuler, Vice President-Insurance Risk Management & Technical Documentation for Invacare Corporation. I am over the age of eighteen (18) years. I am fully competent and able to make this Affidavit and testify as to the facts set out below. I have personal knowledge of the facts related herein.

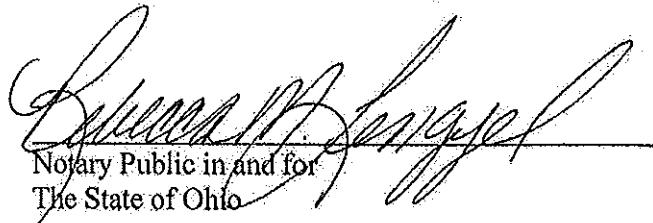
I am employed by Invacare Corporation as Vice President-Insurance Risk Management & Technical Documentation. I have managed numerous product liability claims, including wrongful death and survival claims, for more than ten years. Based on my experience, it is much more likely than not that the representative of the Estate of Ouida Lucille Ethridge, deceased, and her heirs, will seek more than \$75,000 in the above-captioned lawsuit against Invacare Corporation alleging strict liability, failure to warn, negligence, and wrongful death.

Further affiant sayeth not."


Gretchen Schuler, Vice President-Insurance Risk Management & Technical Documentation for Invacare Corporation



SUBSCRIBED and SWORN to before me on this the 23 day of September,
2011.



Rebecca M. Lenoyel
Notary Public in and for
The State of Ohio

REBECCA M. LENOYEL
NOTARY PUBLIC • STATE OF OHIO
Recorded in Erie County
My commission expires Mar. 4, 2016

11-CV-1364
DCORPET
Original Petition - DCA
267301



No. 11cv1364

11 AUG 24 AM 11:20
JASON F. DAVIS
CLERK OF THE COURT
GALVESTON COUNTY, TEXAS

CLARENCE HUGH ETHRIDGE, Individually
and as Personal Representative of the Estate of
OUIDA LUCILLE ETHRIDGE, Deceased;
DONNA WRIGHT and
DEBRA K. SCHULTZ

vs

INVACARE CORPORATION and
AMERICAN BANTEX CORPORATION

IN THE DISTRICT COURT OF

GALVESTON COUNTY, TEXAS

212 JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION

Plaintiffs, **CLARENCE HUGH ETHRIDGE**, Individually and as Personal Representative of the Estate of **OUIDA LUCILLE ETHRIDGE** ("Mrs. Ethridge"), Deceased; **DONNA WRIGHT** and **DEBRA K. SCHULTZ**, complain of Defendants, **INVACARE CORPORATION** ("Invacare"), and **AMERICAN BANTEX CORPORATION** ("Bantex"), and show:

I. DISCOVERY

1. Discovery is intended to be conducted under Level 2.

II. PARTIES

2. Plaintiff, **OUIDA LUCILLE ETHRIDGE**, was and had been a resident of Galveston County, Texas at all times relevant to this case. **CLARENCE HUGH ETHRIDGE** is a resident of Baxter County, Arkansas. He is Mrs. Ethridge's son and acts as the Personal Representative of her Estate. **DONNA WRIGHT** and **DEBRA K. SCHULTZ** are residents of Galveston County, Texas and the daughters of Ouida Lucille Ethridge.

3. Defendant, **INVACARE CORPORATION**, is a Ohio corporation doing business in Galveston County, Texas. This Defendant can be served by serving its registered agent for service, CT Corporation System, 350 N. St. Paul Street, Suite 2900, Dallas, Texas 75201.

4. Defendant, **AMERICAN BANTEX CORPORATION**, is a California corporation not authorized to do business in Texas, but doing business in the State of Texas. This Defendant has not appointed a registered agent for service of citation in the State of Texas. Therefore, pursuant to §17.044(a)(1) of Texas Civil Practices and Remedies Code, service of citation may be perfected on this Defendant by serving the Secretary of State for the State of Texas, who shall immediately mail a copy of the process to said non-resident Defendant at its home office and principal place of business to its registered agent, Paul Lin, at 1815 Rollins Road, Burlingame, California 94010.

III. JURISDICTION AND VENUE

5. The subject matter in controversy is within the jurisdictional limits of this Court.

6. This Court has jurisdiction over this action, and venue is proper pursuant to §15.001, TEX. CIV. PRAC. & REM. CODE, because all or a substantial part of the events or omissions giving rise to the claims alleged in this Petition occurred in Galveston County, Texas.

7. Defendants are subject to the jurisdiction of this Court in that they have, either personally or through their agent, servant or employee, performed one or more of the following acts:

(a) placed products and material in the stream of commerce which were sold and/or used in Galveston County, Texas; (b) operated, conducted, engaged in or carried on a business or business venture in Galveston County, Texas; (c) committed a tortious act within Galveston County, Texas; (d) caused injury to persons or property within Galveston County, Texas while engaged in solicitation or service activities within Galveston County, Texas; and (e) processed, serviced or manufactured products used or consumed within Galveston County, Texas.

8. All conditions precedent to the filing of this case have occurred or been done.

IV. FACTS

9. Mrs. Ethridge was admitted into a long-term care nursing facility called Friendship Haven Healthcare and Rehabilitation Center (the "Nursing Home") on or about April 6, 2007. During her residency at the Nursing Home, Mrs. Ethridge developed pressure ulcers that necessitated that she be placed on an air mattress. Mrs. Ethridge was a vulnerable patient, frail and often confused. Her bed also had half side rails.

10. The air mattress provided to Mrs. Ethridge at the Nursing Home was manufactured, packaged, advertised, labelled, offered for sale, marketed, sold and distributed by Bantex. Bantex marketed the mattress for use in long-term care facilities for patients with the exact health conditions as those suffered by Mrs. Ethridge and in combination with bed rails. Alternatively, Bantex knew, or should have known, that the air mattress would be used in a nursing home setting and that there was a likelihood that the mattress would be used on a bed with side rails. Also, Bantex knew, or should have known, that many patients in long-term care facilities are confused and frail persons who will not reliably follow instructions to lie still, use a call bell, or wait for assistance to get out of bed.

11. The side rails on the bed provided to Mrs. Ethridge were manufactured, packaged, advertised, labelled, offered for sale, marketed, sold and distributed by Invacare. Invacare marketed the side rails for use in long-term care facilities. Invacare knew, or should have known, that the side rails would be used in a nursing home setting and that there was a likelihood that the side rails would be used on beds with air mattresses. Also, Invacare knew, or should have known, that many patients in long-term care facilities are confused and frail persons who will not reliably follow instructions to lie still, use a call bell, or wait for assistance to get out of bed.

12. On or about August 24, 2009 at approximately 5:30 a.m., Mrs. Ethridge was found with her head lodged between the side rails and air mattress on her bed. CPR was initiated, but

Mrs. Ethridge could not be revived. Mrs. Ethridge died on August 24, 2009 as a direct result of the injuries she suffered. An autopsy revealed that Mrs. Ethridge had suffered fractures of her hyoid and thyroid bone, and her cause of death was determined to be positional asphyxia.

V. CAUSES OF ACTION

Count I – Strict Liability – Bantex

13. Plaintiffs incorporate the allegations of paragraphs 1 through 12 above.
14. The air mattress which caused Mrs. Ethridge's injuries was not substantially altered after it left the manufacturer, Bantex, before the incident described herein. The current design of Bantex' air mattress allows for lethal rail entrapments in beds with air mattresses. The injuries Mrs. Ethridge suffered were due to defects in the design, manufacture, and assembly of the air mattress, which caused it to have an unreasonable and dangerous propensity for causing injury due to problems with the design of the air mattress, including, *inter alia*, the following:
 - a. The air mattress is highly compressible, which causes the center of the mattress to rise when a person moves to one side of the mattress, making a ramp that pours the patient off the bed or against the side rail, causing a high risk for serious injury or death to a nursing home patient like Mrs. Ethridge.
 - b. The compression of the mattress widens the space between the mattress and the side rails, increasing the likelihood that a nursing home patient, like Mrs. Ethridge, will become trapped between the mattress and the side rails on the bed, causing a high risk for serious injury or death.
 - c. Once a patient, like Mrs. Ethridge, has become trapped between the mattress and the side rails on the bed, the re-expansion of the axial midline of the air mattress presses the patient's chest, neck or head against the side rail, as happened to Mrs. Ethridge in this case.

15. As a result of the actions and omissions of Bantex, Plaintiffs were damaged in an amount within the jurisdiction of the Court.

Count II – Failure to Warn – Bantex

16. Plaintiffs incorporate the allegations of paragraphs 1 through 12 above.

17. Bantex marketed and sold its air mattresses to long-term care facilities, including the Nursing Home, for use by impaired patients, like Mrs. Ethridge, without providing warnings about the risks and dangers associated with the use of the mattress in combination with side rails.

18. Bantex failed to adequately warn consumers, including Plaintiffs, that the air mattress had a manufacturing defect that rendered it unreasonably dangerous to an ordinary user of the product when used in combination with side rails.

19. Bantex failed to disclose to the Nursing Home or to Plaintiffs that there was an increased risk for serious injury or death to a nursing home patient, like Mrs. Ethridge, when using its air mattress in combination with side rails due to defects in the design of the mattress.

20. Bantex failed to warn the Nursing Home and Plaintiffs how and when to use alarms or sitters to manage delirious or demented persons, like Mrs. Ethridge, who will not reliably follow instructions to lie still, use a call bell, or wait for assistance to get out of bed.

21. Bantex failed to warn the Nursing Home and Plaintiffs on the appropriate use of the air mattress in combination with side rails.

22. Bantex failed to warn the Nursing Home and Plaintiffs on the appropriate use of adaptive equipment, including foam blocks, to make use of the air mattress on a bed with side rails safer for nursing home patients, like Mrs. Ethridge.

23. As a result of the actions and omissions of Bantex, Plaintiffs were damaged in an amount within the jurisdiction of the Court.

Count III – Negligence – Bantex

24. Plaintiffs incorporate the allegations of paragraphs 1 through 12 above.

25. Bantex was negligent in designing, manufacturing and marketing the air mattress. The negligence on the part of Bantex was a proximate cause of the injuries and damages suffered by Plaintiffs. Further, Bantex was negligent in failing to inform Plaintiffs of the inherent risks for lethal

rail entrapments in beds with air mattresses, and in failing to give full, proper and adequate warnings and instructions regarding the hazards associated with the use of its air mattress.

26. The negligence of Bantex was a proximate cause of the injuries and damages suffered by Plaintiffs.

Count IV – Strict Liability – Invacare

27. Plaintiffs incorporate the allegations of paragraphs 1 through 12 above.

28. The side rails which caused Mrs. Ethridge's injuries were not substantially altered after they left the manufacturer, Invacare, before the incident described herein. The current design of Invacare's side rails allows for lethal rail entrapments in beds with air mattresses. The injuries Mrs. Ethridge suffered were due to defects in the design, manufacture, and assembly of the side rails, which caused them to have an unreasonable and dangerous propensity for causing injury due to problems with the design of the side rails, including, *inter alia*, the following:

a. The side rails are inherently dangerous as manufactured as they allow entrapment of patients between the side rail and the air mattress which is highly compressible, causing the center of the mattress to rise when a person moves to one side of the mattress and making a ramp that pours the patient off the bed or against the side rail, causing a high risk for serious injury or death to a nursing home patient like Mrs. Ethridge.

b. The side rail is manufactured in such a manner as to leave a gap between the mattress and the side rail, increasing the likelihood that a nursing home patient, like Mrs. Ethridge, will become trapped between the mattress and the side rail on the bed, causing a high risk for serious injury or death.

29. As a result of the actions and omissions of Invacare, Plaintiffs were damaged in an amount within the jurisdiction of the Court.

Count V – Failure to Warn – Invacare

30. Plaintiffs incorporate the allegations of paragraphs 1 through 12 above.

31. Invacare marketed and sold its side rails to long-term care facilities, including the Nursing Home, for use by impaired patients, like Mrs. Ethridge, without providing warnings about the

risks and dangers associated with the use of the side rails in conjunction with an air mattress or the fact that not all mattresses are compatible with the side rails.

32. Invacare failed to adequately warn consumers, including Plaintiffs, that the side rails had a manufacturing defect that rendered them unreasonably dangerous to an ordinary user of the product in conjunction with an air mattress.

33. Invacare failed to disclose to Plaintiffs that there was an increased risk for serious injury or death to a nursing home patient, like Mrs. Ethridge, when using its side rails in conjunction with an air mattress due to defects in the design of the side rails.

34. Invacare failed to warn the Nursing Home and Plaintiffs that the mattress used on the bed with side rails should leave no gap wide enough to entrap a patient's head or body.

35. Invacare failed to warn the Nursing Home and Plaintiffs to be aware that gaps could be created between its side rail and the mattress by movement or compression of the air mattress which may be caused by patient weight, patient movement, or bed position.

36. Invacare failed to warn the Nursing Home and Plaintiffs that not all bed side rails, mattresses, and bed frames are interchangeable.

37. Invacare failed to warn the Nursing Home and Plaintiffs that variation in bed side rail design and thickness and/or density of the mattress may affect the potential for entrapment.

38. Invacare failed to warn the Nursing Home and Plaintiffs that, when bed side rails and mattresses are purchased separately from the bed frame, the consumer should check with the manufacturer(s) to make sure the bed side rails, mattress, and bed frame are compatible.

39. Invacare failed to warn the Nursing Home and Plaintiffs that bed side rail protective barriers may be used to close off open spaces in which patients might accidentally become entrapped.

40. As a result of the actions and omissions of Invacare, Plaintiffs were damaged in an amount within the jurisdiction of the Court.

Count VI – Negligence – Invacare

41. Plaintiffs incorporate the allegations of paragraphs 1 through 12 above.
42. Invacare was negligent in designing, manufacturing and marketing the side rails. The negligence on the part of Invacare was a proximate cause of the injuries and damages suffered by Plaintiffs. Further, Invacare was negligent in failing to inform Plaintiffs of the inherent risks for lethal rail entrapments in beds with air mattresses, and in failing to give full, proper and adequate warnings and instructions regarding the hazards associated with the use of an air mattress on a bed with its side rails.
43. The negligence of Invacare was a proximate cause of the injuries and damages suffered by Plaintiffs.

Count VII – Wrongful Death Claim

44. Clarence Hugh Ethridge, individually, Donna Wright and Debra K. Schultz incorporate the allegations of paragraphs 1 through 43 of this Petition.
45. Clarence Hugh Ethridge, individually, Donna Wright and Debra K. Schultz bring this wrongful death action against Defendants for the death of Mrs. Ethridge for their own damages and for the damages to the other statutory beneficiaries arising from the injuries which caused Mrs. Ethridge's death. Defendants are liable as the injuries were caused by their wrongful act, neglect, carelessness, and by the wrongful act, neglect, and carelessness of their agents and employees as set forth above.
46. Clarence Hugh Ethridge, individually, Donna Wright and Debra K. Schultz request damages for the loss of consortium of the statutory beneficiaries resulting from the death of Mrs. Ethridge; loss of advice, counsel, companionship, society and affection; grief and mental anguish, bereavement and mental trauma, and emotional damages they suffered as a result of the death of Mrs. Ethridge.

VI. DAMAGES FOR PLAINTIFFS

47. This action is maintained by Plaintiffs for all damages to which Plaintiffs may be justly entitled because of the wrongful conduct made the basis of this suit, including damages for the pain, suffering, torment, destruction of dignity, and mental anguish caused to Mrs. Ethridge by reason of Defendants' wrongful conduct detailed hereinabove.

48. Plaintiffs further seek to recover pre-judgment interest and post-judgment interest for all such damages and reserves the right to amend and state further the amount of actual damages.

VII. PUNITIVE DAMAGES

49. Defendants' actions involved such an extreme degree of risk as to constitute malice resulting in injury and harm to Plaintiffs. Defendants' acts and omissions as alleged in this Petition were willful as they have known about the dangerous condition and unnecessary deaths associated with use of their products for many years. Plaintiffs are entitled to damages, both past and future, and exemplary and punitive damages from Defendants, jointly and severally. Plaintiffs seek punitive damages in an amount commensurate with (a) the nature of the wrongs committed by Defendants; (b) the inhumane character of Defendants' course of conduct; (c) the degree of culpability of the wrongdoers herein; (d) the helpless and dependent nature of the victim in this case; and (e) the severity, frequency and degree to which the conduct described hereinabove offends the public sense of justice. Defendants' conduct alleged hereinabove justifies an award of exemplary damages in an amount sufficient to deter Defendants from engaging in this conduct in the future.

50. Plaintiffs request that damages, punitive damages, pre-judgment interest and costs of Court be awarded to Plaintiffs against Defendants, jointly and severally.

VIII. REQUEST FOR DISCLOSURE

51. Pursuant to Rule 194, T.R.Civ.P., Defendants are requested to disclose, within 50 days of service of this request, the information or material described in Rule 194.2 (a) - (l).

IX. JURY TRIAL REQUEST

52. Plaintiffs request and demand a jury trial.

Plaintiffs, **CLARENCE HUGH ETHRIDGE**, Individually and as Personal Representative of the Estate of **OUIDA LUCILLE ETHRIDGE**, Deceased; **DONNA WRIGHT** and **DEBRA K. SCHULTZ**, pray that Defendants, jointly and severally, be cited for damages in an amount within the jurisdiction of this Court, together with costs of Court, and for such other and further relief to which Plaintiffs may be justly entitled.

RESPECTFULLY SUBMITTED,

MARIAN S. ROSEN & ASSOCIATES

MARIAN S. ROSEN
State Bar No. 17263000
ANGELA SPEARS
State Bar No. 00792866
ATTORNEYS FOR PLAINTIFFS
5065 Westheimer, Suite 840
Houston, Texas 77056
(713) 222-6464 (ofc)
(713) 227-4703 (fax)

11-CV-1384
OGR/EJT
Request for Jury Trial
287003



No. 110V1364

11 AUG 24 AM 11:20
JASON F. TURNER
CLERK OF COURT
GALVESTON COUNTY, TEXAS

CLARENCE HUGH ETHRIDGE, Individually
and as Personal Representative of the Estate of
OUIDA LUCILLE ETHRIDGE, Deceased;
DONNA WRIGHT and
DEBRA K. SCHULTZ

vs

INVACARE CORPORATION and
AMERICAN BANTEX CORPORATION

IN THE DISTRICT COURT OF

GALVESTON COUNTY, TEXAS

212th JUDICIAL DISTRICT

APPLICATION FOR JURY TRIAL

Pursuant to Rule 216a, T.R.Civ.P., Plaintiffs formally make this demand and application for a jury trial in this matter within a reasonable time before the date set for trial of the cause on the non-jury docket, but not less than 30 days in advance of said date. The required jury fee is filed with this Application.

RESPECTFULLY SUBMITTED,

MARIAN S. ROSEN & ASSOCIATES

MARIAN S. ROSEN
State Bar No. 17263000
ANGELA SPEARS
State Bar No. 00792866
ATTORNEYS FOR PLAINTIFFS
5065 Westheimer, Suite 840
Houston, Texas 77056
(713) 222-6464 (ofc)
(713) 227-4703 (fax)

11-CV-1364
 DCINSCF
 Information Sheet - for Case Filing
 257304



THE DISTRICT COURTS OF GALVESTON COUNTY
 CIVIL CASE INFORMATION STATEMENT

This Case Information Statement is for administrative purposes only. It shall be filed with the Parties Original Pleadings and shall be served upon all other parties to the action.

11 CV 1364

COURT NO. _____

CASE NO. _____

FILED BY: Plaintiff

Defendant

Other

STYLE:

CLARENCE HUGH ETHRIDGE, Individually
 and as Personal Representative of the _____
 Estate of OUIDA LUCILLE ETHRIDGE, _____
 Deceased; DONNA WRIGHT and DEBRA K. _____
 SCHULTZ vs. INVACARE CORPORATION and _____
 AMERICAN BANTEX CORPORATION _____

Angela Spears

Name of Primary Attorney filing this

Name of Opposing Attorney, if known

Bar No. 00792866

Bar No. _____

5065 Westheimer, Suite 840

Address

Address

Houston, TX

City

State

77056

Zip

City

State

Zip

713-222-6464

Phone No.

Fax No.

713-227-4703

Phone No.

Fax No.

Briefly describe the case, including special characteristics that may warrant extended discovery or accelerated disposition. If discovery LEVEL 3 is requested, explain why. Attach additional sheets if necessary.

products liability against bed rail manufacturer and air mattress manufacturer for bed rail strangulation

Estimated time for discovery 12 months

Estimated Trial Time 1 week

Do you presently anticipate adding any parties? No

When?

Level Assignment Preferred:
 LEVEL 1

LEVEL 2

LEVEL 3

\$50,000 or less

All other Cases

Court order only

Is this case suitable for ADR? Yes

ADR Method Mediation

Signature of Attorney AS

Date 11/22/2011

Printed Name of Attorney: Angela Spears

All Status Conferences will be set for the Thursday following 90 days from the date of filing.
 YOUR STATUS CONFERENCE IS SET AS FOLLOWS:

10th District Court 10:00 a.m. _____

56th District Court 9:30 a.m. _____

122nd District Court 9:30 a.m. _____

212th District Court 9:00 a.m. _____

405th District Court 9:30 a.m. _____

11-CV-1364
DCCRSERV
Request for Service
257307



MARIAN S. ROSEN & ASSOCIATES

Atorneys at Law
6085 Westheimer, Suite 840
Houston, Texas 77056
Telephone: (713) 222-8464
Toll-Free: (800) 813-5890
Fax: (713) 227-4703

2

MARIAN S. ROSEN

Texas Board of Legal Specialization - Family Law
Also Admitted to Practice in Colorado and Florida
marian@mariansrosen.com

2011/08/24 AM 10:26

ANGELA SPEARS

angela.spears@galvco.org

yes
murray
GALVESTON COUNTY CLERK
GALVESTON COUNTY, TEXAS

August 22, 2011

Mr. Jason Murray
Galveston County District Clerk
600 59th Street, Room 4001
Galveston, Texas 77551-2388

11CV1364

Re: Clarence Hugh Ethridge, Individually and as Personal Representative of the Estate of Ouida Lucille Ethridge, Deceased; Donna Wright and Debra K. Schultz vs Invacare Corporation and American Bantex Corporation.

Dear Mr. Murray,

Enclosed for filing are the original and three copies of the Plaintiffs' Original Petition. Please note the date and time of filing on the extra copy enclosed and return it to us in the envelope provided.

Please prepare citations for service of process upon the following Defendants:

Invacare Corporation
C/O CT Corporation System
350 N. St. Paul Street, Suite 2900
Dallas, Texas 75201

American Bantex Corporation
C/O Texas Secretary of State
Citations Unit
Secretary of State
P.O. Box 12079
Austin, Texas 78711-2079

Two additional copies of the Petition are enclosed for issuance of the citations. Please return the citations to our office so that we can secure service.

OK 301.00

Mr. Jason Murray
Galveston County District Clerk
August 22, 2011
Page Two

We have enclosed a check in the amount of \$301 to cover the filing fee (\$255), issuance of two citations (\$16) and the jury fee (\$30).

Thank you very much for your assistance.

Sincerely,



Carol Morrison
Paralegal

/cam
Enclosures

11-CV-1364
DORELC
Remit Letter for Costs - File Copy
257320



**JASON E. MURRAY
DISTRICT CLERK
GALVESTON COUNTY, TEXAS**

August 24, 2011

Marian S Rosen
5065 Westheimer Suite 840
Houston TX 77056

Re: 11-CV-1364 Clarence Hugh Ethridge, et al vs. Invacare Corporation, et al filed in 212th District Court of Galveston County, Texas

Dear Attorney/Pro Se Party:

Attached please find a receipt for fees due on the above referenced case. Please remit the sum of \$4.00; completion of initial filing fee. If you are an attorney, you may remit payment by a firm check. Pro Se parties may make payment by cashier's check, money order. Payments should be made payable to Jason E. Murray. Cash payments can also be made in person. Credit card payments are also accepted (please call 409-766-2468 for instructions). Credit card payments are offered using a third party vendor and are subject to convenience charges assessed by the vendor.

To ensure proper posting, please include the case number on the face of any payment. Thank you for your immediate attention.

Sincerely,

**JASON E. MURRAY
District Clerk
Galveston County, Texas**

By: Rick Whelton, Deputy Clerk

600 59th Street, Room 4001, Galveston County Justice Center, Galveston, Texas 77551-2388

Phone (409) 766-2424 Fax (409) 766-2292

11-CV-1364

OCOISS

Citation Issuance - Work Product ON WHOM
269321

THE STATE OF TEXAS

CAUSE NO. 11-CV-1364 - 212th District Court

CLARENCE HUGH ETRIDGE, ET AL VS. INVACARE CORPORATION, ET AL

OPV

TO: AMERICAN BANTEX CORPORATION, Upon Whom Process of Service May Be Had By Serving: THE TEXAS SECRETARY STATE, CITATIONS UNIT, P.O. BOX 12079, AUSTIN, TEXAS 78711-2079, WHO SHALL THEN FORWARD A COPY TO REGISTERED AGENT PAUL LIN, 1815 ROLLINS ROAD, BURLINGAME, CA 94010

Greeting:

You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the Clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days from the date you were served this citation and petition/motion, a default judgment may be taken against you. Said written answer may be filed by mailing same to: District Clerk's Office, 600 59th Street, Suite 4001, Galveston, Texas 77551-2388. The case is presently pending before the 212th District Court of Galveston County sitting in Galveston, Texas, and the Original Petition - OCA was filed on this the 24th day of August, 2011. It bears cause number 11-CV-1364 and see the attached petition/motion for named parties to the suit.

The name and address of the Movant or the attorney of record is:

Marian S. Rosen, Attorney
5065 Westheimer, Suite 840
Houston, Texas 77056

The nature of the demands of said Movant is shown by a true and correct copy of the Original Petition - OCA and made a part hereof. If this citation is not served, it shall be returned unserved.

Issued and given under my hand and the seal of said court at Galveston, Texas, on this the 30th day of August, 2011.

ATTEST:
JASON E. MURRAY, District Clerk
Galveston County, Texas

By: Froy Arcega, Deputy



NOTE: Status Conference Set:
11/23/11 AT 9:00 AM in the 212th District Court
SEE ATTACHED FORM

OFFICER'S OR AUTHORIZED & DISINTERESTED PERSON'S RETURN

Came to hand on _____ day of _____, 20____ at _____ o'clock _____. M. and executed in _____ County, Texas by delivering to the within named AMERICAN BANTEX CORPORATION, by serving THE TEXAS SECRETARY STATE in person or by registered or certified mail, return receipt requested, a true copy of this citation, with the date of delivery endorsed thereon, together with the accompanying true and correct copy of the Original Petition - OCA, at the following times and places, to-wit:

Name	Date	Time of Service	Place

Fee - Serving: _____

Amount: _____

Name of Officer or Authorized & Disinterested Person

County, Texas

By

Signature of Deputy or Authorized & Disinterested Person

Authorized & Disinterested Person's Verification:

On this day personally appeared _____, known to me to be the person whose signature appears on the foregoing return. After being duly sworn by me, he/she stated that this citation was executed by him/her in the exact manner recited on the return.

Sworn to and subscribed before me, on this _____ day of _____, 20____.

Notary's Name Printed _____

Notary Public In and for the State of Texas _____

Commission Expires _____

CIVIL CITIGATION UPON WHOM

THE STATE OF TEXAS

CAUSE NO. 11-CV-1364 - 212th District Court

CLARENCE HUGH ETHEridge, ET AL VS. INVACARE CORPORATION, ET AL

TO: INVACARE CORPORATION, Upon Whom Process of Service May Be Had By Serving: ITS REGISTERED AGENT
CT CORPORATION SYSTEM, 350 N. ST. PAUL STREET, SUITE 2900, DALLAS, TEXAS 75201

Greeting:

You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the Clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days from the date you were served this citation and a default judgment may be taken against you. Said written answer may be filed by mailing same to: District Clerk's Office, 600 59th Street, Suite 4001, Galveston, Texas 77551-2388. The case is presently pending before the 212th District Court of Galveston County sitting in Galveston, Texas, and the Original Petition - OCA was filed on this the 24th day of August, 2011. It bears cause number 11-CV-1364 and see the attached petition/motion for named parties to the suit.

The name and address of the Movant or the attorney of record is:

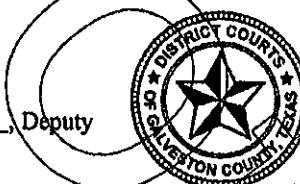
Marian S. Rosen, Attorney
5065 Westheimer, Suite 840
Houston, Texas 77056

The nature of the demands of said Movant is shown by a true and correct copy of the Original Petition - OCA and made a part hereof. If this citation is not served, it shall be returned unserved.

Issued and given under my hand and the seal of said court at Galveston, Texas, on this the 30th day of August, 2011.

ATTEST:
JASON E. MURRAY, District Clerk
Galveston County, Texas

By: Froy Arcega



NOTE: Status Conference Set:
11/23/11 AT 9:00 AM in the 212th District Court
SEE ATTACHED FORM

OFFICER'S OR AUTHORIZED & DISINTERESTED PERSON'S RETURN

Came to hand on _____ day of _____, 20____ at _____ o'clock _____. M. and executed in _____ County, Texas by delivering to the within named INVACARE CORPORATION, by serving CT CORPORATION SYSTEM in person or by registered or certified mail, return receipt requested, a true copy of this citation, with the date of delivery endorsed thereon, together with the accompanying true and correct copy of the Original Petition - OCA, at the following times and places, to-wit:

Name	Date	Type of Service	Place

Fee - Serving: _____

Amount: _____

Name of Officer or Authorized & Disinterested Person _____

County, Texas _____

By _____ Signature of Deputy or Authorized & Disinterested Person _____

Authorized & Disinterested Person's Verification:

On this day personally appeared _____, known to me to be the person whose signature appears on the foregoing return. After being duly sworn by me, he/she stated that this citation was executed by him/her in the exact manner recited on the return.

Sworn to and subscribed before me, on this _____ day of _____, 20____.

Notary's Name Printed _____

Notary Public In and for the State of Texas _____

Commission Expires _____

Logout My Account Search Menu New Case Search Refine Search Back

Location : District Civil and Family Court Images

CASE SUMMARY

CASE NO. 11-CV-1364

Clarence Hugh Ethridge, et al vs. Invacare Corporation, et al

Case Type: Injury/Damage - Other
 Subtype: Personal Injury
 Date Filed: 08/24/2011
 Location: 212th District Court
 Judicial Officer: Criss, Susan

PARTY INFORMATION

		Lead Attorneys
Defendant	American Bantex Corporation Burlingame, CA 94010	
Defendant	Invacare Corporation Dallas, TX 75201	
Plaintiff	Ethridge, Clarence Hugh	Marlan S Rosen <i>Retained</i> 7132226464(W) 713-227-4703(F)
Plaintiff	Schultz, Debra K.	Marlan S Rosen <i>Retained</i> 7132226464(W) 713-227-4703(F)
Plaintiff	Wright, Donna	Marlan S Rosen <i>Retained</i> 7132226464(W) 713-227-4703(F)

EVENTS & ORDERS OF THE COURT

OTHER EVENTS AND HEARINGS	
08/24/2011	<u>Original Petition - OCA</u> copies and s/c sheet mailed to Atty 8-30-11 FA
08/24/2011	<u>Jury Demand</u> Jury demanded in Original Petition, fee paid (workflow changed to Verification)
08/24/2011	<u>Request for Jury Trial</u> Application
08/24/2011	<u>Information Sheet - for Case Filing</u>
08/24/2011	<u>Request for Service</u> 2 citations requested, Job assigned to FA, issued in Galv
08/24/2011	<u>Remit Letter for Costs - File Copy</u>
08/30/2011	<u>Citation Issuance - Work Product</u> 8-30-11 iss 2 cts (1 reg; 1 via SOS) \$20 mailed to Atty FA

Unofficial Record

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CLARENCE HUGH ETHRIDGE, Individually §
And as Personal Representative of the Estate of §
OUIDA LUCILLE ETHRIDGE, Deceased; §
DONNA WRIGHT and §
DEBRA K. SCHULTZ §
§
vs. §
§
INVACARE CORPORATION and §
AMERICAN BANTEX CORPORATION §
§

CAUSE NO. _____

JURY DEMANDED

LIST OF PARTIES AND COUNSEL OF RECORD

Pursuant to Local Rule 81, Defendant Invacare Corporation ("Invacare") files the following items concurrently with their Notice of Removal of Cause No. 11-CV-1364 filed in the District Court of Galveston County, Texas, 212th Judicial District:

Parties

Plaintiff: Clarence Hugh Ethridge, Individually and as Personal Representative of the Estate of Ouida Lucille Ethridge, Deceased;
Donna Wright; and
Debra K. Schultz

Defendants: Invacare Corporation

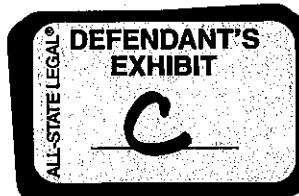
Counsel of Record

**ATTORNEYS FOR DEFENDANT
INVACARE CORPORATION:**

Robert G. Smith, Jr.
SBN: 00794661
FBN: 19976
rgs@lorancethompson.com
Katherine L. Sunstrom
SBN: 24037538
FBN: 34370

ATTORNEYS FOR PLAINTIFF:

Marian S. Rosen
SBN: 17263000
Angela Spears
SBN: 00792866
Marian S. Rosen & Associates
5065 Westheimer, Suite 840
Houston, Texas 77056
713.222.6464



ks@lorancethompson.com
2900 North Loop West, Ste. 500
Houston, Texas 77092
Telephone: 713/868-5560
Facsimile: 713/864-4671

713.227.4703 (fax)

**ATTORNEY FOR DEFENDANT
AMERICAN BANTEX CORPORATION:**

Unknown at this time.

CASE STATUS

Invacare was served with Plaintiff's Original Petition and Request for Disclosures on September 3, 2011. No responses to discovery have been filed. No depositions have been taken. The matter has not been mediated. The case has a status conference scheduled on November 23, 2011.

Respectfully submitted,

LORANCE & THOMPSON, P.C.

"/s/ Robert G. Smith, Jr."

Robert G. Smith, Jr.
SBN: 00794661
FBN: 19976

rgs@lorancethompson.com
Katie Sunstrom
SBN: 24037538

FBN: 34370

ks@lorancethompson.com
2900 North Loop West, Ste. 500
Houston, Texas 77092
Telephone: 713/868-5560
Facsimile: 713/864-4671

**ATTORNEY FOR DEFENDANTS
INVACARE CORPORATION**

CERTIFICATE OF SERVICE

I certify that on the 23rd day of September, 2011, a true and correct copy of the foregoing document was furnished to the following parties pursuant to Federal Rules of Civil Procedure:

Marian S. Rosen
SBN: 17263000
Angela Spears
SBN: 00792866
Marian S. Rosen & Associates
5065 Westheimer, Suite 840
Houston, Texas 77056
713.222.6464
713.227.4703 (fax)

ATTORNEYS FOR PLAINTIFFS

Paul Lin
Registered Agent
American Bantex Corporation
1815 Rollins Road
Burlingame, California 94010.

"/s/ Robert G. Smith, Jr."
Robert G. Smith, Jr.